Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1176

LILLIAN GOLDBERG,

Petitioner,

v.

CASPAR WEINBERGER, Secretary of Health, Education, and Welfare of the United States,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Decisions of the Courts Below

The decision of the United States District Court, Eastern District of New York, dated April 12, 1976, which dismissed petitioner's claims is reported at 411 F. Supp. 88. The decision of the United States Court of Appeals for the Second Circuit Slip Op. No. 178, Dec. 1, 1976, affirming the decision of the District Court is not yet reported. Both decisions are reproduced in the appendix.

Statement of the Grounds of Jurisdiction

1. The basis for federal jurisdiction in the District Court is 42 U.S.C. § 405(g). The decision of the Court of Appeals

affirming the dismissal of this action by the District Court was entered on December 1, 1976.

2. Jurisdiction to review the decision of the Court of Appeals in this case is conferred upon this Court by 28 U.S.C. § 1254.

THE QUESTIONS PRESENTED FOR REVIEW ARE AS FOLLOWS:

1. May estoppel issue against the Federal government based upon misinformation dispensed by a federal employee?

2. When a recipient of Social Security widow's disability benefits calls her local Social Security district office to inquire as to the effect her proposed remarriage will have on her benefits, is misinformed by an employee of that office, remarries in reliance on that information, and due to the remarriage has her benefits terminated, should estoppel be granted against the government reinstating benefits as of the date of termination?

THE STATUTES WHICH THIS CASE INVOLVES ARE AS FOLLOWS:

United States Code, Title 42, provides in pertinent parts:
§ 402 Widow's Insurance Benefits

(e) (1) The widow (as defined in § 416(c) of this title) and every surviving divorced wife (as defined in § 416(d) of this title) of an individual who died a fully insured individual, if such widow or such surviving divorced wife

(A) is not married,

(B) (i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability

(as defined in § 423(d) of this title) which began before the end of the period specified in ¶ 5, shall be entitled to a widow's insurance benefit for each month.

(e) (4) If a widow, after attaining the age of 60, marries . . ., such marriage shall, for purposes of subsection (1) of this subsection, be deemed not to have occurred; except that . . . such widow's insurance benefit for the month in which such marriage occurs and each month thereafter prior to the month in which the husband dies or such marriage is otherwise terminated, shall be equal to one-half of the primary insurance amount of the deceased individual on whose wages and self-employment income such benefit is based.

Statement of the Case

The petitioner, LILLIAN GOLDBERG, is a 64-year-old New York resident who had been receiving widow's disability insurance benefits since 1969, followng the death of her first hubsand, Murray Kaufman, on February 12, 1969. In 1972, petitioner sought to remarry. Before doing so, she contacted a local Social Security District Office by telephone to inquire whether her continued eligibility for benefits, or the amount of her benefits, would be affected if she were to remarry. She was informed that her benefits would continue, but would be reduced by about half.

Relying upon the information provided by the Social Security employee, petitioner remarried on May 21, 1972. In July, 1972, petitioner's benefits were terminated. Petitioner subsequently discovered that she had received incorrect information from the Social Security Office. The Social Security Act provides that widows who remarry after attaining age 60 will have their benefits reduced. However, the benefits of widows who remarry prior to age

60 are terminated.* Thus, petitioner, by remarrying only 55 days prior to her 60th birthday (July 15, 1972), lost her benefits.

After a hearing, the Administrative Law Judge found, on July 10, 1973, that petitioner had relied, to her detriment, upon the misrepresentation of an employee of the Social Security office. (A-11).** This finding was accepted by both the District Court (A-12) and the Court of Appeals. (A-6). Thus, there is no dispute between the parties concerning the facts in this action. Despite the detrimental reliance by petitioner, the Administrative Law Judge found that the representation of the Social Security employee would not bind the government; in short, the government would not be estopped from denying benefits to petitioner. (A-12). Upon exhaustion of the administrative remedies available to her, petitioner commenced an action in the United States District Court for the Eastern District of New York requesting either that the government be estopped from terminating her benefits or, in the alternative, that the statutory scheme in question be declared unconstitutional.*** On April 1, 1976, the Court, per the Honorable Thomas C. Platt, Jr., U.S.D.J., held that estoppel would not issue and granted defendant's motion for summary judgment. (A-16).

The Court of Appeals affirmed on December 1, 1976, holding that "[i]t is well established that 'estoppel cannot be set up against the Government on the basis of an unauthorized representation or at of an officer or employee who is without authority in his individual capacity to bind the Government.'" (citation omitted) (A-6).

* §202(e)(1)(A), (B)(ii) and (e)(4) of the Social Security Act, 42 U.S.C. §402(e)(1)(A), (B)(ii) and (e)(4).

** All such references throughout this petition are to the appendix submitted herewith.

*** While the constitutional claim was pursued in the Second Circuit, it has been eliminated for the purpose of this petition and, therefore, will not be discussed further.

REASONS FOR GRANTING THE WRIT

POINT I

Estoppel May Be Issued Against the Government.

While there is no rule that the government cannot be estopped, estoppel against the government had been traditionally disfavored. The leading case for this proposition is *Federal Crop Insurance Corp.* v. *Merrill,* 332 U.S. 380 (1947). Not along after *Merrill, supra,* this Court arrived at a differing result in the case of *Moser* v. *United States,* 341 U.S. 41 (1951). The *Merrill* and *Moser* decisions seem to have caused confusion among the circuits in their attempts to establish principles under which estoppel may issue.

In *Merrill, supra,* the Court refused to issue estoppel where wheat farmers had relied to their detriment on misinformation regarding crop insurance provided by representatives of the Federal Crop Insurance Corporation. The Court declared that published wheat crop insurance regulations were binding on the farmers whether or not they knew of the regulations or were misinformed as to their content. 332 U.S. at 385.

In *Moser, supra,* the plaintiff, a Swiss national, sought naturalization as a U.S. citizen, but he had previously requested exemption from military service under a Swiss-U.S. treaty. He was informed by the State Department that the Selective Service Act barred from citizenship any

resident of a neutral country who applied for such an exemption. The Swiss legation protested and the State Department, in conjunction with the Selective Service System and the Legation, agreed on a revised exemption form which specifically omitted the reference to a bar from citizenship. Plaintiff thereupon applied for the exemption. The Court held that the government was estopped from claiming that plaintiff had waived his rights to citizenship. 341 U.S. at 46. The guarantee of "elementary fairness," in the opinion of the Court required estoppel.

The *Moser* court did not mention *Merrill.* However, a possible reason for the different approaches in the two cases is that petitioners in *Merrill* were farmer-businessmen who might have been presumed to have knowledge of the appropriate rules governing insurance of their crops* while the petitioner in *Moser* could not reasonably be so charged. But, whatever the reason, federal courts such as the court below in this case have had difficulty in resolving the differences between these two decisions. This has resulted in a conflict in the circuits concerning the standards to be applied in estoppel cases.

In its decision in this case, the Second Circuit refused to issue estoppel. (A-7). The Court relied principally on *Merrill* in holding that reliance to detriment on misinformation obtained from a government agent would not excuse

* However, Mr. Justice Jackson (joined by Mr. Justice Douglas) felt that such a presumption was unfounded:

> To my mind, it is an absurdity to hold that every farmer who insures his crops knows what the Federal Register contains or even knows that there is such a publication. If he were to peruse this voluminous and dull publication as it is issued from time to time in order to make sure whether anything has been promulgated that affects his rights, he would never get time to plant any crops. Nor am I convinced that a reading of technically-worded regulations would enlighten him much in any event. *Merrill, supra,* 332 U.S. at 387.

a failure to qualify for benefits under relevant statutes and regulations.* (A-6). In so ruling, the Court not only specifically rejected the position of the Ninth Circuit on this issue (see p. 8 *infra*), but also seemed to contradict two of its own earlier decisions on estoppel.

In *Podea* v. *Acheson,* 179 F.2d 306 (2d Cir. 1950), the Second Circuit held that the government could not deny citizenship to a petitioner who entered the Rumanian Army after being erroneously informed by the State Department that he had already lost his citizenship by prior acts. The letter of the applicable law clearly called for loss of citizenship due to his foreign military service. The Court felt, however, that since petitioner justifiably relied to his detriment on the misinformation given to him, equity and justice required that petitioner be placed in the position he would have been in but for the actions of the State Department. Thus, petitioner was granted all citizenship rights. *Id.* at 309. In *Podea,* as in the case at bar, the issue was not simply an omission by a government agent to inform or act, but rather an error of commission, the redress of which would simply restore the *status quo.*

In its decision below, the Second Circuit's failure to mention *Podea* is conspicuous, particularly in light of its more recent treatment of estoppel in *Corneil-Rodriguez* v. *I.N.S.,* 532 F.2d 301 (2d Cir. 1976). *Corneil,* like *Podea,* was a citizenship case. There, petitioner, relying upon misinformation from consular officers, married three days before leaving her native Dominican Republic for the United States, thereby forfeiting her exemption from a labor certification requirement for entry. The consular officers

* However, petitioner was not an applicant for benefits. She was already receiving benefits for which she was fully qualified by statute. The issue here is whether she should *continue* to qualify for benefits, albeit in a reduced amount.

had failed to give petitioner a warning not to marry which was mandated by regulation. The Court granted estoppel since "just a smattering of correct information" would have resulted in petitioner simply postponing her wedding for three days and thereby preventing her deportation. *Id.* at 304.

Thus, *Corneil* differs from *Podea* only in that it involved an error in omission rather than commission. Seemingly because of this, the Court below found *Corneil* to be limited to its facts and therefore unpersuasive unauthority regarding the circumstances of the case at bar.

Such a holding, however, ignores the rationale underlying *Corneil*. Nowhere in the *Corneil* decision does the Court attempt to narrow its holding to cases involving only acts of omission.* Further, the *Corneil Court* relied not only on *Podea, supra,* to avoid a "wooden" interpretation of the Immigration and Naturalization Act, but also on *Moser, supra,* as "an important illustration of . . . a sensible and humane application of the law" (*Id.* at 305) in finding that estoppel should issue.**

The decision below is, therefore, quite clearly a step in the other direction. Not only did the Court limit *Corneil* to an act of omission, but it pointedly rejected the position which the Ninth Circuit has adopted in granting estoppel in such cases*** (A-6), to wit: *Schuster* v. *Commissioner*

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* In *United States* v. *Wharton,* 514 F.2d 406 (9th Cir. 1975), the Court noted that affirmative misconduct by government officials or misrepresentation (*i.e.,* an act of commission) presented an even more compelling case for estoppel than did neglect or failure to inform. *Id.* at 409-410.

** "We are, of course, aware of the decision in *Federal Crop Ins. Corp.* v. *Merrill,* 332 U.S. 380, 68 S.Ct. 1, 92 L.2d 10 (1947), but believe it to have been substantially undermined by *Moser.*" *Corneil, supra,* 532 F.2d at 305, n. 15.

*** The two leading Ninth Circuit cases cited above were favorably mentioned in *Corneil,* 532 F.2d at 305, n. 15.

of the Internal Revenue, 312 F.2d 311 (9th Cir. 1962) (reliance on erroneous determination by Commissioner of estate tax due); *Brandt* v. *Hickel,* 427 F.2d 53 (9th Cir. 1970) (reliance on ambiguous statements by bureau of land management); *United States* v. *Lazy F. C. Ranch,* 481 F.2d 985 (9th Cir. 1973) (reliance on approval of contracts and failure to provide necessary information by service of Department of Agriculture); *Fox* v. *Morton,* 505 F.2d 254 (9th Cir. 1975) (reliance on misleading program description by Bureau of Indian Affairs); *United States* v. *Wharton,* 514 F.2d 406 (9th Cir. 1975) (reliance on misrepresentation of Interior Department officials).

While the specific facts of these cases may differ from those in the instant case, they make clear that where the government's wrongful conduct (whether affirmative or by omission) threatens to work serious injustice and the publice interest would not be unduly damaged, the imposition of estoppel is appropriate. *Wharton, supra,* at 412-13; *Fox, supra,* at 256; *Lazy F. C. Ranch, supra,* at 989.

Following these decisions, a California District Court has held in a case similar to the one at bar that estoppel may be applied against the government in a case concerning the Social Security Act. *Weston* v. *Mathews,* No. F-75-205, (E.D. Cal. Oct. 12, 1976) (A-20), concerned an applicant for Social Security widow's insurance and Supplemental Security Income (SSI) benefits who was erroneously informed that she could not apply for SSI until her widow's benefit application had been processed. She eventually received SSI benefits but not retroactively to the time of the misinformation. In granting retroactive relief, the Court found that the Ninth Circuit's estoppel standards required such a result since the affirmative misconduct of a government employee goes beyond mere nonfeasance and constitutes "a further and distinct basis for estopping the defendant in this case." *Weston, supra,* at 4.

Thus *Weston* and the decision of the Second Circuit in this case are diametrically opposite and clearly evidence the conflict between the Second and Ninth Circuits regarding the doctrine of estoppel of the government. A resolution of this conflict requires the intervention of this Court.

POINT II

Estoppel Should Issue In This Case.

The circumstances surrounding the termination of petitioner's benefits clearly indicate the propriety of granting estoppel in this case. Petitioner, while receiving Social Security widow's disability benefits, was misinformed as to the effect her proposed remarriage would have on her continued receipt of benefits. It is undisputed that had petitioner been given accurate information, she could and would have waited an additional 55 days to remarry, thereby protecting her rights to continued benefits in a reduced amount.

The cases discussed in Point I, *supra,* indicate that if failure to grant estoppel would result in manifest injustice, and the public interest would not be unduly affected, estoppel should issue against the government provided that all the elements of estoppel are present. These elements are: a lack of knowledge and means of knowledge of the facts in question by the party claiming the estoppel; reliance, in good faith, upon the false representations of the party to be estopped; and, a change in position based thereon to his injury, detriment or prejudice. *U.S.* v. *Aetna Casualty and Surety Co.,* 481 F.2d 1095, 1099 (8th Cir. 1973); *U.S.* v. *Lennox Metal Mfg. Co.,* 131 F.Supp. 717, 731 (E.D.N.Y. 1954), *aff'd,* 225 F.2d 302 (2d Cir. 1955).

All of these elements are present in the instant case. Petitioner had no knowledge of the effects of her contemplated remarriage on her continuing eligibility for widow's benefits. In order to gain such knowledge, she inquired at the local Social Security office. She relied, in good faith, on the misinformation given her there, namely, that her remarriage before age 60 would result only in a reduction of her benefits. Due to this reliance, petitioner remarried before she reached age 60. This change in status was permanently detrimental to her right to receive widow's benefits under the Social Security Act.* But for the misrepresentation, petitioner would simply have waited until her 60th birthday, merely 55 days away, before remarrying. Thus, she would have continued to receive benefits, albeit in a reduced amount. Instead, she was deprived of her right to the benefits, although she was not at fault. Petitioner's reliance was reasonably based on the affirmative action of a government agent, since she had no other information that the facts were otherwise. It is noteworthy that the publications of the Social Security Administration regarding benefits instruct the beneficiary to contact his/her local Social Security District Office for benefit information. Certainly it is unreasonable to require petitioner to seek the advice of an attorney in order to decipher the detailed requirements of the statute. As the court in *Corneil, supra,* said:

> Unfortunately, unintentional injustices too often can be visited upon the naive albeit honest alien who is understandably unfamiliar with the labyrinthine intricacies of our immigration laws. 532 F.2d at 304.

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* While petitioner would have been entitled to receive widow's disability benefits for only two additional months after her remarriage (and did in fact receive these through an error), said benefits would have automatically been converted to aged widow's benefits upon petitioner reaching age 60 had she not remarried. Because of the misinformation, petitioner is foreclosed from receiving these benefits.

Persons unfamiliar with the equally labyrinthine Social Security Act obviously fall victim to similar fates.

Finally, it can be heard that estoppel will not be allowed if it works a violation of the law. What this rule tries to prevent is a violation of the purpose of the law and public policy. One must look beyond the strict interpretation of the words of the statute to the governmental policy meant to be achieved by those words. *Corneil, supra.*

The legislative history of § 202(e) (42 U.S.C. § 402(e)) of the Social Security Act clearly states that the essential purpose of the provision was to benefit widows (like those in petitioner's position). Remedial legislation like the Social Security Act should be construed and applied broadly. *Rosenberg* v. *Richardson,* 538 F.2d 487 (2nd Cir. 1976). Thus, the real purpose of the law should not be frustrated. *U.S.* v. *Shubert,* 14 F.R.D. 471, 474 (S.D.N.Y. 1953).

It is clear that petitioner is in the specific category of people whom this statute seeks to protect and benefit and through no fault of her own, she is in technical non-compliance with the statute. It has been held that the government will be estopped where there is merely such a technical non-compliance. *In Re La Voie,* 349 F.Supp. 68, 72-74 (D.C. V.I. 1972). It is also well accepted that where estoppel against the government will not disrupt the administration of national policy, *Gesturo* v. *District Director of U.S. Immigration and Naturalization Service,* 337 F.Supp. 1093, 1101 (D.C. Calif. 1971), and will not go against the public interest,* *U.S.* v. *Lazy F. C. Ranch, supra,* 481 F.2d at 989 (9th Cir. 1973), it should be allowed.

* It can hardly be argued that permitting petitioner to continue to receive benefits would frustrate any public policy considering: (1) §202(e) of the Social Security Act (42 U.S.C. §402(e)) clearly was promulgated to grant benefits to needy widows; (2) widows over the age of 60 are permitted to remarry with only a reduction in benefits; (3) petitioner was only 55 days from her 60th birthday when she remarried and clearly would have waited to remarry had she been given correct information; and, (4) estoppel would merely put the parties into the positions that would have existed had not the Social Security Administration given misinformation.

The Social Security Administration should be estopped from denying petitioner widow's insurance benefits.

CONCLUSION

For the foregoing reasons, petitioner respectfully submits that a writ of *certiorari* should be issued to the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 178—September Term, 1976.

(Argued October 19, 1976 Decided December 1, 1976.)

Docket No. 76-6078

LILLIAN GOLDBERG,

Appellant,

v.

CASPAR WEINBERGER, Secretary of Health, Education and Welfare,

Appellee.

Before:

HAYS, ANDERSON and GURFEIN,

Circuit Judges.

Appeal from an order of the United States District Court for the Eastern District of New York, Thomas C. Platt, *Judge,* which sustained appellee's decision that appellant is not entitled to widow's insurance benefits, and dismissed the complaint.

Affirmed.

DAVID S. PREMINGER, New York, N.Y. and JOHN C. GRAY, JR., New York, N.Y., *for Appellant.*

DAVID C. TRAGER, United States Attorney, New York, N.Y. (Josephine Y. King and Richard

P. Caro, Assistant United States Attorneys, of counsel), *for Appellee.*

HAYS, *Circuit Judge:*

Prior to July, 1972, plaintiff-appellant Lillian Goldberg had been receiving widow's disability benefits pursuant to section 202(e)(1)(B)(ii) of the Social Security Act, 42 U.S.C. § 402(e)(1)(B)(ii)(1970 ed.) ["the Act"].[1] On May 21, 1972, about two months before her sixtieth birthday, plaintiff remarried, thereby disqualifying herself from receiving any more widow's disability insurance benefits or widow's insurance benefits under the Act.[2] Accordingly, in

1 Section 202(e)(1) provides, in pertinent part:

"(e) Widow's insurance benefits.

(1) The widow (as defined in section 416(c) of this title) and every surviving divorced wife (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married, [and]

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of this title) which began before the end of the period specified in paragraph (5),

* * *

shall be entitled to a widow's insurance benefit for each month . . ."

42 U.S.C. § 402(e)(1) (1970 ed.).

2 Had plaintiff waited until after her sixtieth birthday to remarry, she would have remained eligible to receive continued, albeit reduced, benefits. Thus, section 202(e)(4) of the Act provides:

"If a widow, after attaining the age of 60, marries . . ., such marriage shall, for purposes of paragraph (1) of this subsection, be deemed not to have occurred; except that . . . such widow's insurance benefit for the month in which such marriage occurs and each month thereafter prior to the month in which the husband dies or such marriage is otherwise terminated, shall be equal to one-half of the primary insurance amount of the deceased in-

July of 1972 plaintiff's benefits were terminated by the Social Security Administration, which affirmed its decision in a Reconsideration Determination dated November 7, 1972. This decision was upheld, in turn, by an Administrative Law Judge and the Appeals Council of the Social Security Administration. On review in the United States District Court for the Eastern District of New York, Judge Platt sustained the Secretary's decision, and granted the government's motion for summary judgment.

Plaintiff now appeals to this court, attacking the decision of the district court on two grounds: First, she claims that as a result of information given her by her local Social Security office prior to her remarriage, to the effect that marriage would reduce but not eliminate the benefits, the government is estopped from finding her ineligible for benefits. Second, and in the alternative, she argues that the relevant statutory provisions arbitrarily discriminate on the basis of marital status and age, in violation of the equal protection and due process clauses. Because we find both of these contentions to be without merit, we affirm the district court's decision.

I.

The Social Security Act, insofar as it is relevant to this controversy, provides as follows: section 202(e)(1) grants benefits to widows who are (A) unmarried, *and* (B) *either* (i) over the age of 60 *or* (ii) over the age of 50 and disabled. *See* 42 U.S.C. § 402(e)(1)(1970 ed.), note 1, *supra*. Section 202(e)(4) provides that if a widow remarries *after* attaining the age of 60, the marriage will be

dividual on whose wages and self-employment income such benefit is based."

42 U.S.C. § 402(e)(4) (1970 ed.).

In actual fact, plaintiff's disability benefits were continued for two months, due to a delay in administrative processing. She was allowed to retain the overpayments because she was without fault in their receipt.

disregarded, except that her benefits will be reduced. *See* 42 U.S.C. § 402(e)(4) (1970 ed.), note 2, *supra*. A widow who remarries *before* attaining the age of 60, however, is simply no longer "not married" within the meaning of section 202(e)(1)(A). Thus, if a disabled widow remarries before she reaches 60, her benefits are terminated because she does not satisfy the requirements of either 202(e)(1) or 202(e)(4); if the disabled widow waits until after she is 60 to remarry, she continues to receive reduced benefits.

Plaintiff attacks this statutory scheme on the ground that it deprives her of her rights to due process and equal protection of the law by impermissibly discriminating on the basis of marital status and age.[3] We disagree.

The Act admittedly draws a sharp line between widows who remarry before age 60 and those who wait until after their sixtieth birthday to remarry. Nevertheless, we cannot overturn this classification unless we find that it bears no rational relationship to a valid Congressional purpose.[4]

3 We agree with the district court that plaintiff lacks standing to challenge the statutory scheme insofar as it mandates termination of *disability* benefits upon remarriage by a widow under the age of 60. Since plaintiff's disability benefits continued after her marriage until her sixtieth birthday, *see* note 2 *supra*, she received all such benefits to which she would have been entitled even had she not remarried. *See* Social Security Act § 202(e)(1)(B)(ii), 42 U.S.C. § 402(e)(1)(B)(ii) (1970 ed.). She therefore has not suffered the requisite personal injury to object to the provision for termination of disability benefits upon remarriage. *See generally Evans* v. *Hills*, No. 74-1793 (2d Cir. June 4, 1976) (*en banc*).

4 We reject appellant's suggestion, based on the Supreme Court's decisions in *Loving* v. *Virginia*, 388 U.S. 1 (1967), *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942), and *Griswold* v. *Connecticut*, 381 U.S. 479 (1965), that the statute be examined under a standard of strict scrutiny. She argues that the Act infringes on a fundamental right, namely the right to marry, by requiring as a condition to securing benefits that a widow remain unmarried until her sixtieth birthday.

In *Loving* v. *Virginia*, *supra*, the Court described the freedom to marry as "one of the vital personal rights essential to the orderly pursuit of happiness by free men." 388 U.S. at 12. However, the Virginia stat-

Originally, the Act provided that a widow who remarried was disqualified from receiving any insurance benefits. In 1965 Congress added section 202(e)(4), providing for a reduction rather than a total elimination of benefits to widows remarrying over the age of 60. Act of July 30, 1965, Pub. L. No. 89—97, § 333(a), 79 Stat. 286, 403-04. Congress could have decided to extend reduced benefits to widows who remarry at *any* age, but it chose to draw the line at age 60.

As the district court reasoned, Congress may well have concluded that a widow who remarries during her 50's is more likely to marry a man having several years earning capacity than is a widow 60 or older. Alternatively, Congress may have decided that practical considerations of administration require that there be an objective, somewhat arbitrary criterion for determining benefit eligibility. *See, e.g., Matthews* v. *Lucas,* 96 S. Ct. 2755, 2764-67 (1976); *Weinberger* v. *Salfi,* 422 U.S. 749, 781-85 (1975); *Dan-*

utory scheme there invalidated *prevented* marriages between persons solely on the basis of *race;* neither a total bar to marriage nor an invidious racial classification is involved in this case. Moreover, *Loving* did not hold that the right to marry is "fundamental," as that term is understood in an equal protection context.

Skinner v. *Oklahoma, supra,* is not to the contrary. Despite *dictum* to the effect that "[m]*arriage and procreation* are fundamental to the very existence and survival of the race," 316 U.S. at 541 (emphasis added), *Skinner* held only that "strict scrutiny of the classification which a State makes in a *sterilization law* is essential . . ." *Id.* (emphasis added). Again the court did not hold that any classification which burdens the right to marry must be examined with strict scrutiny.

Nor does *Griswold* v. *Connecticut, supra,* support plaintiff's argument. There the Court was concerned with "the notions of privacy surrounding the marriage relationship," 381 U.S. at 486, not with the right to marry.

In any event, eligibility for benefits may be dependent upon marital or familial relationships without violating the constitution. *See, e.g., Weinberger* v. *Salfi,* 422 U.S. 749, 777-85 (1975); *Kahn* v. *Shevin,* 416 U.S. 351, 353-56 (1974). We therefore agree with appellee that the crux of plaintiff's constitutional objection is that the statute unconstitutionally discriminates on the basis of *age.*

dridge v. *Williams,* 397 U.S. 471, 485 (1970). In either case, we cannot say that Congress acted unreasonably in denying benefits to widows who remarry before reaching 60 years of age.

We hold that the Act does not discriminate among benefit claimants on the basis of criteria which bear no rational relationship to a legitimate congressional purpose. It follows that plaintiff's constitutional argument is without merit.

II.

Plaintiff also argues that the government is estopped from terminating her benefits because of a misrepresentation by a local Social Security Office employee, to the effect that remarriage before attaining age 60 would reduce but not terminate her benefits.

The government does not dispute plaintiff's claim that she received misinformation and relied on it to her detriment. Rather, the government argues that plaintiff may not invoke the doctrine of estoppel in this case.

It is well established that "estoppel cannot be set up against the Government on the basis of an unauthorized representation or act of an officer or employee who is without authority in his individual capacity to bind the Government." *Byrne Organization, Inc.* v. *United States,* 287 F.2d 582, 587 (Ct. Cl. 1961). *See also Federal Crop Insurance Corp.* v. *Merrill,* 332 U.S. 380 (1947). Although at least one court has evinced a willingness to depart from this principle in certain circumstances, *see, e.g., United States* v. *Wharton,* 514 F.2d 406, 412-13 (9th Cir. 1975); *Fox* v. *Morton,* 505 F.2d 254, 256 (9th Cir. 1974); *United States* v. *Lazy F C Ranch,* 481 F.2d 985, 988 (9th Cir. 1973); *Brandt* v. *Hickel,* 427 F.2d 53 (9th Cir. 1970); *Schuster* v. *C.I.R.,* 312 F.2d 311 (9th Cir. 1962), we decline to do so here.

The government could scarcely function if it were bound by its employees' unauthorized representations. Where a party claims entitlement to benefits under federal statutes and lawfully promulgated regulations, that party must satisfy the requirements imposed by Congress. Even detrimental reliance on misinformation obtained from a seemingly authorized government agent will not excuse a failure to qualify for the benefits under the relevant statutes and regulations.[5]

Thus, since it is clear that the local employee of the Social Security Administration was not authorized to represent to plaintiff that she would continue to receive reduced benefits after her marriage, the government is not estopped from denying her widow's insurance benefits.

Accordingly, the judgment of the district court is affirmed.

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5 Our decision in *Corniel-Rodriguez* v. *I.N.S.*, 532 F.2d 301 (2d Cir. 1976), is not to the contrary. We held there that estoppel may be invoked against the government where there is "noncompliance with an affirmatively required procedure. . . ." 532 F.2d at 306-07. We took pains, however, to limit our decision to the specific facts of that case, particularly the fact that the government employee had failed to provide petitioner with a warning *mandated* by federal regulations. *Id.* and n.18. No such regulation governs Social Security Office employees.

Lillian GOLDBERG, Plaintiff,

v.

Caspar WEINBERGER, Secretary of Health, Education and Welfare, Defendant.

No. 74C157.

United States District Court, E. D. New York.

April 2, 1976.

Widow's disability insurance benefits were terminated upon her remarriage 55 days prior to her 60th birthday, and she brought action for recovery of benefits. The District Court, Platt, J., held that government was not estopped from terminating benefits by reason of fact that social security employee had misinformed her of effect of remarriage, and that termination of benefits did not deny widow equal protection or deprive her of property without due process.

Widow's motion denied.

1. Estoppel ⇐62.2(4)

Though social security employee misinformed widow of effect of proposed remarriage on her social security benefits, she could not invoke doctrine of estoppel to bar government's termination of widow's insurance benefits. Social Security Act, § 202(e)(1)(A, B), (e)(4), 42 U.S.C.A. § 402(e)(1)(A, B), (e)(4).

2. Social Security and Public Welfare ⇐145

Where widow received widow's disability insurance benefits until her re-

marriage 55 days before she attained age 60, and benefits would have been terminated at age 60 even if she had not remarried, since she would then have been entitled to old-age insurance benefits, widow lacked standing to raise constitutional challenge to statutory provision requiring termination of widow's disability insurance benefits upon remarriage before age 60. Social Security Act, § 202(e)(1)(A, B), 42 U.S.C.A. § 402(e)(1)(A, B).

3. Social Security and Public Welfare ⇐122

Congress had rational basis for allowing widows who remarry after 60th birthday to draw widow's insurance benefits while denying such benefits to widows who remarry before age 60, and thus such provisions of Social Security Act did not unreasonably discriminate between women similarly situated solely on basis of their marital status. Social Security Act, § 202(e)(1)(A, B), 42 U.S.C.A. § 402(e)(1)(A, B).

4. Constitutional Law ⇐242.3(1), 299
Social Security and Public Welfare ⇐122

Congress had rational basis for specifically providing that widows who remarry before 60th birthday not receive widow's insurance benefits, and thus widow was not denied equal protection or due process of law on basis of age when widow's insurance benefits were terminated after she remarried 55 days prior to her 60th birthday. Social Security Act, § 202(e)(1), 42 U.S.C.A. § 402(e)(1).

David S. Preminger, Legal Services for the Elderly Poor, New York City, John C. Gray, Jr., Brooklyn, N. Y., Legal Services Corp., Brooklyn, N. Y., for plaintiff.

David G. Trager, U. S. Atty., Brooklyn, N. Y., by Douglas J. Kramer, Asst. U. S. Atty., Brooklyn, N. Y., for defendant.

PLATT, District Judge.

OPINION AND ORDER

PRELIMINARY STATEMENT

Plaintiff sues for Social Security widow's insurance benefits and both parties have moved for summary judgment, the defendant seeking dismissal of plaintiff's complaint, and plaintiff seeking benefits in whole or in part, or, in the alternative, injunctive relief and a declaration that 42 U.S.C. § 402(e)(1)(A) and (B) and § 402(e)(4) are unconstitutional on the grounds that they arbitrarily discriminate on the basis of marital status and/or age.

The dispute arises because the plaintiff, when she was a 59 year old widow receiving widow's disability insurance benefits, married her present husband about two months before she became 60 years of age. As a result of her remarriage before age 60, plaintiff became ineligible to receive (i) any more widow's disability insurance benefits, and (ii) any widow's insurance benefits under the Social Security Act. In fact, although she was not eligible therefor since she had remarried some two months prior to age 60, plaintiff did receive all of her widow's disability insurance payments up to the date when she attained that age, *cf.* 42 U.S.C. § 402(e)(1).

The facts are not in dispute. Plaintiff was born on July 15, 1912 and attained the age of 60 years on July 15, 1972.

Plaintiff was once married to a Mr. Murray Kaufman, who died. Thereafter plaintiff filed an application for widow's disability insurance benefits and received them beginning in 1969.

Shortly before her remarriage, plaintiff, at the urging of her son, talked on the telephone with a representative in the local Social Security Office about the possible effects of her forthcoming marriage upon her disability benefits. She was informed that the marriage might reduce her benefits but would not terminate them. The Administrative Law Judge, in the proceeding below, gave "full credence to her testimony that she did consult the local Social Security Office prior to her marriage and that she was misinformed as to the effect of her contemplated nuptial arrangements upon the benefits she was receiving."

Relying upon this information, plaintiff married her present husband, Mr. Goldberg, on May 21, 1972. In July 1972 plaintiff's Social Security benefits were terminated because she had remarried before attaining the age of 60.

As indicated, plaintiff's 60th birthday was on July 15, 1972, 55 days after she remarried.

The Administrative Law Judge made the following findings and conclusions:

"1. The plaintiff filed an application for widow's insurance benefits on March 10, 1969, alleging disability from February, 1969 at age 53.

"2. The claimant remarried in May, 1972, and attained age 60 on July 15, 1972.

"3. By remarrying prior to the attainment of age 60, the claimant lost her right to obtain widow's benefits on the earnings record of her deceased husband, Murray Kaufman.

"4. There was an overpayment created in the sum of $265.

"5. The claimant was 'without fault' in the creation of such overpayment.

"6. The recovery of such overpayment will be waived, since it is 'deemed' that such adjustment will be 'against equity and good conscience.'"

and it was the decision of the judge

"* * * that, based on her application * * * the claimant is not entitled to widow's insurance benefits under Section 202 of the Social Security Act * * *".

This decision was affirmed by the Appeals Council and plaintiff commenced the present action within 60 days from the date of such affirmance as required by 42 U.S.C. § 405(g).

THE ESTOPPEL ARGUMENT

Plaintiff first claims that the government should be estopped from terminating plaintiff's disability insurance benefits by reason of the misrepresentation of the local Social Security Office employee concerning the effects of plaintiff's proposed remarriage on such benefits and plaintiff's reliance thereon to her alleged detriment.

The law is and has for many years been, however, that "estoppel cannot be set up against the Government on the basis of an unauthorized representation or act of an officer or employee who is without authority in his individual capacity to bind the Government". *Byrne Organization, Inc. v. United States*, 287 F.2d 582, 587, 152 Ct.Cl. 578 (1961); *Fed-*

eral Crop Ins. Corp. v. Merrill, 332 U.S. 380, 68 S.Ct. 1, 92 L.Ed. 10 (1947); *Massaglia v. C.I.R.*, 286 F.2d 258 (10th Cir. 1961); *Flamm v. Ribicoff*, 203 F.Supp. 507, 510 (S.D.N.Y.1961); *Terrell v. Finch*, 302 F.Supp. 1063 (S.D.Tex.1969); *Rock v. United States*, 279 F.Supp. 96, 101 (S.D. N.Y.1968).

As the Government points out, the *Terrell* and *Flamm* cases, *supra*, are for all intents and purposes here indistinguishable. In both cases the claimant relied upon incorrect telephone information from an employee of the Social Security Administration, as did the plaintiff in the case at bar, and in both cases the Court denied plaintiff's motion for summary judgment. In *Terrell*, where claimant remarried in reliance on such misinformation only 26 days before her sixtieth birthday, the Court said (302 F.Supp. at p. 1064):

"Thus, if a widow remarries before age sixty, she forfeits her right to widow's insurance benefits. It is clear that plaintiff has not complied with the provisions of the Act. Unless the government is estopped to deny plaintiff the widow's insurance benefits, the decision of the hearing examiner must be affirmed.

'It is an established proposition that estoppel cannot be set up against the Government on the basis of an unauthorized representation or act of an officer or employee who is without authority in his individual capacity to bind the Government.' *Byrne Organization Inc. v. United States*, 287 F.2d 582, 587, 152 Ct.Cl. 578 (1961). See also, *Massaglia v. C.I.R.*, 286 F.2d 258 (10th Cir. 1961); *Ewing v. Risher*, 176 F.2d 641 (10th Cir. 1949); *Southern Hardwood Traffic Assoc. v. United States*, 283 F.Supp. 1013 (W.D.Tenn.1968); *Flamm v. Ribicoff*, 203 F.Supp. 507 (S.D.N.Y.1961); *Taylor v. Flemming*, 186 F.Supp. 280 (W.D.Ark.1960).

"There is no doubt that the local employee of the Social Security Administration who purportedly misinformed plaintiff was not authorized to make the representation in question.

"*Ewing v. Risher, supra*; *Flamm v. Ribicoff, supra*; and *Taylor v. Flemming, supra*, are all cases in which local Social Security employees allegedly misinformed claimants. In each case the courts ruled that estoppel would not apply. In *Taylor*, a plaintiff seeking dependent parent's insurance benefits was erroneously informed that she did not have to file a proof of support. In ruling that estoppel did not apply the Court said:

'It is apparent that plaintiff is attempting to assert some type of estoppel against the defendant; however, no cases are cited in support of this position. If Mrs. Taylor did rely to her detriment upon such a statement, it is indeed unfortunate. However, the Government cannot be estopped from insisting upon performance of statutory conditions precedent by the unauthorized acts of an employee of a local Social Security Office.' *Id.* at 284.

"The right to widow's insurance benefits that plaintiff seeks to enforce here is one created by statute, not by common law. Plaintiff must comply with the statutory requirements in order to have an enforceable right. The unauthorized act of a government employee cannot vary the requirements established by Congress."

and in *Flamm*, the Court held (203

F.Supp. at p. 510):

"But even assuming that he did receive 'misinformation' on which Mrs. Berger acted to her detriment, it is plain that estoppel will not lie against the Government under these circumstances. Parties dealing with the Government are charged with knowledge of and are bound by statutes and lawfully promulgated regulations despite reliance to their pecuniary detriment upon incorrect information received from Government agents or employees. Failure to comply with the applicable statute and regulations precludes recovery against the Government 'no matter with what good reason' the claimant believed she had come within the requirements. Estoppel will not lie regardless of the financial hardship 'resulting from innocent ignorance.' *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 68 S.Ct. 1, 92 L.Ed. 10; *Walker-Hill Co. v. United States*, 162 F.2d 259 (7 Cir. 1947), cert. den. 332 U.S. 771, 68 S.Ct. 85, 92 L.Ed. 356; *James v. United States*, 185 F.2d 115 (4 Cir. 1950)."

Plaintiff herself cites and relies in part upon the *Massaglia* case, *supra*, but that case clearly does not support her position for there the late Chief Judge Murrah held (286 F.2d at p. 262):

"• • • But neither the duty of consistency, nor the principles of equitable estoppel bind the Commissioner to unauthorized acts of his agents, *Sanders v. Commissioner*, 10 Cir., 225 F.2d 629, nor preclude him from correcting mistakes of law in the imposition and computation of tax liability, including the power to retroactively correct his rulings, regulations and decisions upon which taxpayers have relied. *Automobile Club of Michigan v. Commissioner*, 353 U.S. 180, 77 S.Ct.

707, 1 L.Ed.2d 746; • • •"

Corniel-Rodriguez v. Immigration and Naturalization Service, 532 F.2d 301 (2d Cir. 1976), does not change the principles that control here. While that case, which involved review of a deportation order, did hold that the government was estopped, the ruling was clearly limited to the facts before the Court. The major feature relied on by the Court of Appeals in *Corniel-Rodriguez* to distinguish cases like *Terrell* and *Flamm* seems to have been that the defendant was affirmatively required by regulation to present correct immigration information even in the absence of requests for information, see 22 C.F.R. § 42.122(d). Of course, no such regulation governs Social Security Office employees.

[1] In short, as the law now stands plaintiff may not invoke the doctrine of estoppel to require that the government pay her widow's insurance benefits.

THE EQUAL PROTECTION ARGUMENT

The plaintiff further claims that Section 202(e)(1)(A) and (B) of the Social Security Act (42 U.S.C. § 402(e)(1)(A) and (B)) violates the Equal Protection Clause of the Constitution in that it discriminates between women similarly situated solely on the basis of marital status, granting disability benefits and widow's insurance benefits to widows who remain single but denying such benefits to widows who remarry before they reach 60. She also advances the closely related argument that such Section and Section 202(e)(4) of the Act violate the Equal Protection and Due Process Clauses of the Constitution in that they discriminate on the basis of age by granting widow's insurance benefits to women

who marry after age 60 and denying such benefits to those who marry before attaining the age of 60.

[2] Since plaintiff received and has been allowed to keep all of the widow's disability insurance benefits to which she would have been entitled even if she had not remarried, she lacks standing in this case to raise a constitutional objection to the statutory provision for termination of such benefits upon remarriage.

In other words, plaintiff received widow's disability insurance benefits from age 53 when she was first entitled to the same through July 15, 1972 when she attained age 60. Under 42 U.S.C. § 402(e)(1), if she had not remarried prior to the age of 60 her benefits would have been terminated since she would at that date have become "entitled to an old age insurance benefit equal to or exceeding the primary insurance amount of such deceased individual"—i.e., she would have been entitled to a widow's insurance benefit.

[3] Plaintiff may also be understood to argue that a widow who has not remarried by age 60 can receive the standard widow's insurance benefits, that one who has remarried by age 60 cannot do so, and that this constitutes discrimination based on marital status. As will be discussed below, we cannot find that Congress had no rational basis for concluding that widows who remarry before 60 have less need for benefits than those who do not. And unless widows who remarry at *any* age, even in their 20's, are to be given benefits, Congress had to draw a line; we can only conclude that Congress had a rational basis for determining that such a line should be drawn somewhere, and cannot say that age 60 is an unreasonable place to draw it.

Thus plaintiff in the case at bar has no basis to make her claim that the statute discriminates between women similarly situated solely on the basis of marital status.

The second half of plaintiff's claim is, as indicated, that the statute arbitrarily discriminates on the basis of age. The gist of this claim is that there is no rational basis to presume that marriage before age 60 improves a widow's economic situation and eliminates her need for social security benefits, but that marriage after 60 does not eliminate the need for social security benefits. This is, plaintiff says, particularly true in cases like hers where the claimant is disabled both before and after age 60.

Stated in another way, plaintiff says she was, on account of her disability, no more able to obtain or hold a job before 60 than she was after that age and Congress recognized that fact when they lowered the age of entitlement to widow's disability insurance benefits to 50. From this, plaintiff concludes that Congress *must have* overlooked inserting a provision in the law which would have enabled disabled widows in their 50's who remarried to receive reduced benefits in the same manner as widows who remarried after 60.

Congress did not, however, overlook such contingency. It specifically provided that disabled widows who remarried in their 50's would stop receiving benefits on such remarriage. 42 U.S.C. § 402(e)(1).

[4] Nor may it be said that no rational basis exists for making such distinction. Congress may well have concluded, for example, that a widow who remarries during her 50's (whether or not she is receiving disability benefits during her

50's) will in all likelihood marry a man who still has several years earning capacity from which she will derive support, and that the same is not likely to be true in the case of a widow 60 years or more.

CONCLUSION

In reality, in the case at bar, plaintiff when she remarried only 55 days short of her 60th birthday was in the same situation as all other widows just shy of their 60th birthday, and not in a special category on account of disability. By reason of an unfortunate mistake she remarried too soon and lost certain widow's benefits to which she might otherwise have been entitled. This Court, however, cannot rectify this situation; only Congress can.

Accordingly, defendant's motion for summary judgment must be granted and plaintiff's cross-motion must be denied in all respects.

SO ORDERED.

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Clerk, U. S. Dist. Court
Eastern District of California

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT
OF CALIFORNIA

* * *

GLADYS P. WESTON, Plaintiff,	)	Civil Action No. F-75-205
vs.	)	AMENDED ORDER (FR. CIV. P. 52)
F. DAVID MATTHEWS, SECRETARY OF HEALTH, EDUCATION AND WELFARE, Defendant.	)	

This action came on for hearing before the Court, Honorable M.D. CROCKER, United States District Judge, presiding; and, after hearing from counsel upon plaintiffs' and defendants' counter motions for summary judgment, the court makes the following Findings of Facts and Conclusions of Law:

A. FINDINGS OF FACT.

1. On July 19, 1974, the plaintiff, a 62 year old widow, went to the Social Security Administration office in Fresno, California, for the specific purpose of filing a formal written application for, inter alia, Social Security widow's insurance benefits and Supplemental Security Income (SSI) benefits on the grounds that she was a widow and was disabled due to heart disease and arthritis.

2. On the above-stated date and location the Social Security Administration,

through one of defendants' authorized employees, specifically and erroneously refused to give plaintiff a formal SSI application to fill out. Plaintiff was erroneously told that she could not apply for SSI benefits until her claim for widow's benefits was processed. At this time plaintiff was allowed to and proceeded to file a formal written application for Social Security widow's benefits, having been informed by defendants' employee that this was the first step in obtaining SSI benefits. Said widow's insurance benefits were subsequently granted.

3. In August, 1974, plaintiff inquired about SSI and widow's disability benefits at a Portland, Oregon, Social Security Office. This is when she first learned that she had a right to apply for SSI benefits when she first attempted to do so in the Fresno Office on

July 19, 1974.

4. In October, 1974, after her return to Fresno, plaintiff filed a formal written application for SSI benefits which was subsequently granted effective October 1, 1974, and based upon the same disabilities that Mrs. Weston suffered when she first attempted to apply in July 1974.

5. Plaintiff filed a timely administrative hearing request contending that her SSI benefits should have commenced as of July 1, 1974, the month in which she first attempted to apply for said benefits.

6. The hearing was held on March 31, 1975. The Administrative Law Judge, after hearing plaintiff's and her daughter's testimony, found that plaintiff filed an effective application for SSI benefits on July 19, 1974 and that she was entitled to benefits as

of July 1, 1974.

7. The Appeals Council, reviewing the case upon its own motion, reversed the Administrative Law Judge's decision. It concluded that since plaintiff did not file a formal written application for SSI benefits, prior to October 1, 1974, she was not entitled to said benefits prior to that date.

8. Plaintiff timely commenced this court action on October 31, 1975.

9. But for defendants' erroneous refusal to allow plaintiff to submit a formal written application for SSI benefits on July 19, 1974 and but for its erroneously informing her, on the same day, that nothing could be done for her SSI claim until her application for widow's insurance benefits was processed, she would have formally applied for and would have been granted SSI benefits as

of July 1, 1974.

B. BASED ON THE FOREGOING FINDING OF FACT, THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. Defendant was legally required to allow the plaintiff to apply for SSI benefits when she first attempted to do so on July 19, 1974.

2. Defendant was also legally obligated to affirmatively assist Mrs. Weston in completing a formal written application for said benefits on the above date.

3. Except for not filing a formal written application for SSI benefits, plaintiff met all requirements for the entitlement of SSI benefits effective July 1, 1974.

4. The refusal by defendant to allow the plaintiff to complete and file a formal written application for SSI benefits and his

misinforming her that she could not apply for SSI benefits until her claim for Social Security widow's benefits was processed were the sole causes for plaintiff's failure to file a formal written application for SSI benefits on July 19, 1974.

5. The refusal by defendant to allow the plaintiff to complete and file a formal written application for SSI benefits and the plaintiff's reliance on defendant informing her that she could not apply for said benefits until her application for widow's insurance benefits was processed caused her not to be granted benefits she was otherwise entitled to.

6. The plaintiff has met all the requirements for estoppel to apply in this case in accordance with the Ninth Circuit's standards for estoppel as enunciated in United States v. Georgia-Pacific Co. 421 F. 2d 92,

96 (9th Cir. 1970) and United States v. Wharton, 514 F. 2d 406, 412 (9th Cir. 1975)

7. The defendant's disobedience of its own rules and regulations goes beyond mere nonfeasance and constitutes affirmative misconduct. This affirmative misconduct provides a further and distinct basis for estopping the defendant in this case. See In the Matter of Naturalization of 68 Filipino War Vets, 406 F. Supp. 931, 938 (N. D. Cal. 1975)

8. Except for the filing of formal written application for SSI benefits, plaintiff met all legal requirements for the granting of SSI benefits effective July 1, 1974.

C. BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSION OF LAW, IT IS HEREBY ORDERED THAT:

1. That defendant grant plaintiff SSI benefits as of July 1, 1974 without requiring

any further formal written application; and

2. That plaintiff be awarded her costs, in the sum of $19.40.

Dated this 12th day of November, 1976.

/s/ M.D. CROCKER
M. D. CROCKER
United States District Judge

Supreme Court, U. S.
FILED
MAY 11 1977
MICHAEL RODAK, JR., CLERK

No. 76-1176

In the Supreme Court of the United States

OCTOBER TERM, 1976

LILLIAN GOLDBERG, PETITIONER

v.

JOSEPH A. CALIFANO, JR.,
SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

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LILLIAN GOLDBERG, PETITIONER

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JOSEPH A. CALIFANO, JR.,
SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner, whose remarriage before age 60 terminated her receipt of widow's disability benefits under Section 202(e)(1)(B)(ii) of the Social Security Act, 49 Stat. 623, as added and amended, 42 U.S.C. 402(e)(1)(B)(ii), contends that the government is estopped from terminating her benefits because a local Social Security Administration employee misinformed petitioner that her remarriage before attaining age 60 would reduce but not terminate her benefits.

Section 202(e)(1) of the Social Security Act grants benefits to widows who are (A) unmarried, *and* (B) *either* (i) over the age of 60 *or* (ii) over the age of 50 and disabled. Section 202(e)(4) provides that if a widow remarries *after* attaining the age of 60, the marriage will be disregarded.

except that her benefits will be reduced. A widow who remarries *before* attaining the age of 60, however, is simply no longer "not married" within the meaning of Section 202(e)(1)(A). Thus, if a disabled widow remarries before she reaches 60, her benefits are terminated because she does not satisfy the requirements of either Section 202(e)(1) or Section 202(e)(4); if the disabled widow waits until after she is 60 to remarry, she continues to receive benefits.

When petitioner was a 59 year-old widow receiving widow's disability insurance benefits under Section 202 (e)(1), she telephoned a representative in the local office of the Social Security Administration to ask advice about the possible effects of her forthcoming remarriage upon her receipt of disability benefits. Petitioner was informed that the marriage might reduce her benefits but would not terminate them. Relying upon this misinformation, petitioner married her present husband in May 1972, two months before her sixtieth birthday; as a consequence, she became disqualified under the Act from receiving further widow's benefits on the basis of her former husband's earnings account (Pet. App. A-2).

The Social Security Administration terminated petitioner's benefits, and the termination was upheld by the Secretary on administrative review (Pet. App. A-3).

Petitioner sought review in the United States District Court for the Eastern District of New York, contending that the misinformation given her by the local Social Security office estopped the government from finding her ineligible for benefits under Section 202(e). In the alternative, petitioner argued that Section 202(e) arbitrarily discriminates on the basis of marital status and age, in violation of the Equal Protection and Due Process Clauses of the Fifth Amendment.

The district court (Pet. App. A-8 to A-19; 411 F. Supp. 88) and the court of appeals (Pet. App. A-1 to A-7; 546 F. 2d 477) both rejected petitioner's contentions. Petitioner here contends only that the government is estopped from terminating her widow's benefits. The decision below on this issue was correct and does not warrant review.

The court of appeals correctly stated (Pet. App. A-6):

> It is well established that "estoppel cannot be set up against the Government on the basis of an unauthorized representation or act of an officer or employee who is without authority in his individual capacity to bind the Government." *Byrne Organization Inc.* v. *United States,* 287 F. 2d 582, 587 (Ct. Cl. 1961).

See also, *e.g., Federal Crop Insurance Corp.* v. *Merrill,* 332 U.S. 380; *United States* v. *U.S. Fidelity & Guaranty Co.,* 309 U.S. 506, 513; *United States* v. *Shaw,* 309 U.S. 495, 500-502; cf. *Immigration and Naturalization Service* v. *Hibi,* 414 U.S. 5.[1] That principle is particularly applicable where, as here, a claimant seeks social welfare benefits that the governing legislation does not grant. See, *e.g., Ewing* v. *Risher,* 176 F. 2d 641 (C.A. 10); *Terrell* v. *Finch,* 302 F. Supp. 1063 (S.D. Tex.); *Flamm* v. *Ribicoff,* 203 F. Supp. 507 (S.D. N.Y.); *Taylor* v. *Flemming,* 186 F. Supp. 280 (W.D. Ark.). As the court of appeals noted, "the government could scarcely function if it were bound by its employees' unauthorized representations" (Pet. App. A-7).

Petitioner relies (Pet. 7-9) on a number of lower court decisions that she claims stands for the proposition

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[1] *Moser* v. *United States,* 341 U.S. 41, which petitioner cites (Pet. 5-6), is inapposite. In that case, the Court expressly disavowed any reliance upon a theory of estoppel. 341 U.S. at 47.

that the government can be estopped by unauthorized representations whenever "basic notions of fairness require[ ] * * *." *United States* v. *Wharton*, 514 F. 2d 406, 411 (C.A. 9); *United States* v. *Lazy F C Ranch*, 481 F. 2d 985, 989 (C.A. 9). To the extent that they do so, they are contrary to the overwhelming weight of authority and to the controlling decisions of this Court. A doctrine of estoppel, particularly when applied with respect to a claim for money that the governing statute denies, would permit a court to override Congress' judgment and directive with respect to the allocation of social welfare funds.

In any event, each of the cases on which petitioner relies involved unusual circumstances not comparable to those presented here.[2] Petitioner cites no court of appeals' decision requiring, on grounds of estoppel, payment of

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[2]In *United States* v. *Wharton*, *supra*, government officials incorrectly informed an individual that there was no way he could perfect title to land his family had cleared and farmed for 36 years, and in reliance upon that advice he failed to perfect title in the remaining time actually available. In *United States* v. *Lazy F C Ranch*, *supra*, the government sought to recover money paid to individuals pursuant to contracts with the government entered into on the basis of official representations that the payments would be proper. In *Brandt* v. *Hickel*, 427 F. 2d 53 (C.A. 9), government officials informed applicants for an oil and gas lease that they would not lose their priority if they refiled a corrected application within thirty days, and the Secretary of Interior later determined that another application filed within that time had priority. In *Schuster* v. *Commissioner*, 312 F. 2d 311 (C.A. 9), the Commissioner of the Internal Revenue Service originally determined that certain estate assets were not taxable and subsequently changed his mind and sought to assess the trustee for a deficiency after the trustee had distributed the assets. In *Fox* v. *Morton*, 505 F. 2d 254 (C.A. 9), the government claimed that a particular program for Indians was a jobs program, not a general assistance program that would have entitled participants to a hearing upon the termination of benefits; the court found that the program was in fact an assistance program, and noted incidentally that the government itself described the program as a general assistance program in the program contracts.

social welfare benefits to a claimant who does not satisfy the eligibility conditions established by Congress. Accordingly, while some appellate decisions, particularly those of the Ninth Circuit, may reflect a general approach to estoppel that is at odds with the settled principle that was correctly applied in this case, that conflict in approach does not warrant further review of the decision below.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

MAY 1977.